Sportswear Group, Inc. *and* Joint Board, International Ladies' Garment Workers' Union, AFL–CIO. Case 1–CA–27142

March 25, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

Upon a charge filed by the Union on March 14, 1990, and amended on April 16, 1990, the General Counsel of the National Labor Relations Board issued a complaint on March 22, 1991, against Sportswear Group, Inc., the Respondent, alleging that it violated Section 8(a)(5) and (1) of the National Labor Relations Act. Thereafter, the Respondent filed an answer to the complaint.

On December 13, 1991, the General Counsel filed a Motion for Summary Judgment. On December 24, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent did not file a response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The complaint alleges that since about December 20, 1989, the Respondent has failed and refused to make contractually required payments into the Union's Holiday Fund, Health and Welfare Fund, ILGWU Retirement Funds, and ILGWU Health Services Plan and that these subjects relate to the wages, hours, and other terms and conditions of bargaining unit employees.

In its answer to the complaint, the Respondent admits the above factual allegations, but denies that its conduct violated the Act.

We agree with the General Counsel that because the Respondent has admitted the above factual allegations of the complaint, the Respondent's bare denial that it has engaged in unfair labor practices does not constitute an adequate defense to allegations that it has violated Section 8(a)(5) and (1) of the Act by failing to abide by the provisions of its collective-bargaining agreement.[1] Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

[1] Member Oviatt agrees that the Respondent's bald denial that its action violated the Act, with nothing more, is inadequate as a defense to the complaint allegations. See *Tammy Sportswear Corp.*, 302 NLRB 860 fn. 1 (1991); also see *Zimmerman Painting & Decorating*, 302 NLRB 856 (1991) (Member Oviatt dissenting).

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with an office and place of business in East Boston, Massachusetts, has been engaged in business as a garment industry contractor and manufacturer. Annually, the Respondent, in the course and conduct of its business operations, sells and ships from its East Boston facility products, goods, and materials valued in excess of $50,000 directly to points outside the Commonwealth of Massachusetts; annually purchases and receives at its East Boston facility products, goods, and materials valued in excess of $50,000 directly from points outside the Commonwealth of Massachusetts; and annually provides services valued in excess of $50,000 for enterprises which are themselves directly engaged in interstate commerce.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All non-supervisory production, maintenance, packing and shipping workers employed by the Respondent at its East Boston facility, but excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act.

Since prior to 1985, and at all times material here, the Union has been the designated exclusive collective-bargaining representative of the employees in the unit, and has been recognized as the representative by the Respondent. Recognition has been embodied in successive bargaining agreements, the most recent of which was effective by its terms for the period June 16, 1988, to June 15, 1991. At all times material here, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the employees in the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Since about December 20, 1989, the Respondent has failed and refused to pay the Holiday Fund the amounts which have become due as of and since December 20, 1989, under article XV, article XLIII, and schedule ''B'' of the 1988–1991 contract. Since about December 20, 1989, the Respondent has failed and refused to pay the fringe benefit amounts which have become due as of and since December 20, 1989, under

article XVIII of the 1988–1991 contract as follows: Health and Welfare Fund, ILGWU Retirement Funds, and ILGWU Health Services Plan. These subjects relate to the wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

We find that by the acts and conduct described above, the Respondent has failed and refused, and is failing and refusing, to bargain collectively with the representative of its employees, and the Respondent thereby has been engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing to make contractually required payments to the Union's Holiday Fund and by failing and refusing to make contractually required fringe benefit payments to the Union's Health and Welfare Fund, ILGWU Retirement Funds, and ILGWU Health Services Plan, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to make whole its unit employees by making all required contractual payments to the Union's Holiday Fund, and by making all fringe benefit payments to the Health and Welfare Fund, ILGWU Retirement Funds, and ILGWU Health Services Plan, as provided in the collective-bargaining agreement, which have not been paid.[2] The Respondent shall also reimburse its employees for any expenses ensuing from the Respondent's failure to make the payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Sportswear Group, Inc., East Boston, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Joint Board, International Ladies' Garment Workers' Union, AFL–CIO as the exclusive bargaining representative of the employees in the appropriate unit described below, by failing to make payments to the Union's Holiday Fund, and by failing to make fringe benefit payments to the Health and Welfare Fund, ILGWU Retirement Funds, and ILGWU Health Services Plan, as required by its collective-bargaining agreement with the Union. The appropriate unit is:

> All non-supervisory production, maintenance, packing and shipping workers employed by the Respondent at its East Boston facility, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole its bargaining unit employees by making payments into the Union's Holiday Fund, and by making all fringe benefit payments to the Union's Health and Welfare Fund, ILGWU Retirement Funds, and ILGWU Health Services Plan, as required by the collective-bargaining agreement, which have not been paid, in the manner set forth in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(c) Post at its facility in East Boston, Massachusetts, copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[2] Because the provisions of employee benefit fund agreements are variable and complex, we leave to the compliance stage the question of whether the Respondent must pay any additional amounts into the benefits funds in order to satisfy our make-whole remedy. *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Joint Board, International Ladies' Garment Workers' Union, AFL–CIO by failing and refusing to make payments to the Union's Holiday Fund and by failing to make fringe benefit payments to the Union's Health and Welfare Fund, ILGWU Retirement Funds, and ILGWU Health Services Plan, as required by the collective-bargaining agreement with the Union. The appropriate unit is:

> All non-supervisory production, maintenance, packing and shipping workers employed by us at our East Boston facility, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole our employees by making all contractually required payments to the Union's Holiday Fund, and by making contractually required fringe benefit payments to the Union's Health and Welfare Fund, ILGWU Retirement Funds, and ILGWU Health Services Plan, which have not been paid, and WE WILL reimburse our employees for any expenses ensuing from our failure to make the payments, with interest.

SPORTSWEAR GROUP, INC.